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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 442/2004

Appellant : Pankaj Singh
(Non-Applicant No.1)

Versus

Respondents : Nirmala Bai & two others
(Claimant)

MISC. APPEAL NO. 420/2004

Appellant : Pankaj Singh
(Non-Applicant No.1)

Versus

Respondents : Bundram & two others
(Claimant)

POST FOR JUDGMENT ON 01-05-2007

Sd/-
Dhirendra Mishra
Judge



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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 442/2004

Appellant :
(Non-Applicant No.1)

Pankaj Singh,
S/o. Dhal Singh Thakur,
Aged about 45 years,
Near Ware House Padav Chowk, P.S. &
Tahsil Mungeli,
Dist : Bilaspur (C.G.)

Versus

Respondents :
(Claimant)

1. Nirmala Bai,
W/o Shri Naresh Shrivastava,
Aged about 35 years,
R/o Village Hatnikala,
Post Office Dharampura,
P.S. & Tahsil Mungeli,
Dist : Bilaspur (C.G.)

Non-Applicant No.2

2. Rakesh Kumar alias Baba,
S/o Chotelal Singh Thakur,
Aged about 28 years,
R/o Near Water Tank Mungeli,
P.S. & Tahsil Mungeli,
Dist : Bilaspur (C.G.)

Non-Applicant No.3

3. The Branch Manager,
United India Insurance Company Ltd.,
Branch Rajendra Nagar Chowk,
Bilaspur, Dist : Bilaspur (C.G.)

MISC. APPEAL NO. 420/2004

Appellant :
(Non-Applicant No.1)

Pankaj Singh,
S/o. Dhal Singh Thakur,
Aged about 45 years,
Near Ware House Padav Chowk, P.S. &
Tahsil Mungeli,
Dist : Bilaspur (C.G.)

Versus

Respondents :
(Claimant)

1. Bundram,
S/o Late Janka Garg,
Aged about 53 years,
R/o Village Sonpuri,
Post Office Fasterpur,
P.S. Kunda, Tahsil Mungeli,
Dist : Bilaspur (C.G.)



Non-Applicant No.2

2. Rakesh Kumar alias Baba,
S/o Chotelal Singh Thakur,
Aged about 28 years,
R/o Near Water Tank Mungeli,
P.S. & Tahsil Mungeli,
Dist. : Bilaspur (C.G.)

Non-Applicant No.3

3. The Branch Manager,
United India Insurance Company Ltd.,
Branch Rajendra Nagar Chowk,
Bilaspur, Dist. : Bilaspur (C.G.)

Present:

Mr. Prafull Bharat, counsel for the appellants/owner.

Mr. Dashrath Gupta, counsel for the respondents No.
3/Insurance Company.

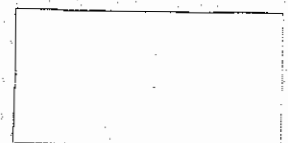
J U D G M E N T

(Delivered on 01/05/2007)

Dhirendra Mishra, J

M.A.No. 442/2004 arising out of claim case No. 11/2002 and M.A.No. 420/2004 arising out of claim case No. 16/2002, filed by Pankaj Singh, owner of vehicle in question, are being disposed of by this common judgment as both these appeals, arising out of the same accident, are directed against the impugned award dated 29.12.2003 passed by learned 3rd Additional Motor Accident Claims Tribunal (FTC) Mungeli, Bilaspur and same question of law is involved for adjudication of these appeals.

2. Undisputed facts in these appeals are that appellant/non-applicant No.1 is the registered owner of Tata Sumo bearing registration No. M.P.-26 E/A-2134, which was insured with non-applicant No. 3/Insurance Company vide certificate of insurance of Ex.D/1 as private car with maximum capacity of nine passengers including the driver and the cleaner. The policy was in force on the date of accident i.e. 4.2.2002 when the vehicle met with an accident, as a result of which claimants of both these appeals sustained various injuries. At the relevant time non-applicant No. 2 Rakesh Kumar, was driver of the vehicle.

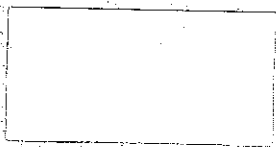


3. The claimants filed their claim petitions before the Tribunal with the averments that the vehicle was being driven rashly and negligently by the driver, as a result of which they sustained grievous injuries. The driver was prosecuted for rash and negligent driving vide criminal case No. 140/02 in the Court of Judicial Magistrate First Class, Mungeli.

4. In reply, the non-applicants No. 1 & 2 denied the averments as also the allegation of rash and negligent driving. They further stated that the vehicle was insured with the non-applicant No. 3 at the relevant time, therefore, compensation, if any, is payable by the insurer.

5. The non-applicant No. 3/Insurance Company in its reply submitted that the vehicle in question was being driven by the non-applicants No. 1 & 2 in breach of conditions of insurance policy, the driver did not have valid and effective driving licence and since there is a breach of policy conditions, the insurer is not liable for satisfying the award of compensation.

6. On the basis of pleadings of the respective parties, Tribunal framed issues and passed the impugned award in favour of the claimants and held that the appellant/non-applicant No. 1 and non-applicant No.2/driver are jointly and severally liable for payment of compensation to the claimants. In claim case No. 11/2002 a sum of Rs.15,000/- was awarded in favour of claimant Nirmala Bai and in claim case No. 16/2002 also a sum of Rs.15,000/- was awarded in favour of claimant Bund Ram, with interest at the rate of 9% per annum from the date of application. However, non-applicant No.3/Insurance Company was exonerated from the liability of satisfying the award with a finding that the vehicle was insured for private purposes and not for carrying passengers whereas the claimants were not traveling free of charge and as such, the vehicle was being used for hire to carry passengers in breach of conditions of insurance policy.

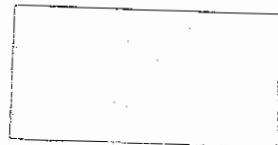


7. Learned counsel for the appellant submitted that finding of the Tribunal is perverse and contrary to the evidence on record. Referring to the statements of the claimants, it has been argued that both the claimants in their statements on oath have categorically stated that they were known to owner of the vehicle since before and the vehicle was proceeding towards Pandariya, therefore, they traveled in the vehicle without paying any fare charges. However, learned Tribunal relied upon the testimony of Siddique Usman, who has been examined on behalf of the Insurance Company and stated that the vehicle was insured as a private vehicle but the same was being used for carrying passengers as the passengers were not traveling free of cost and they had investigated the accident and learnt that the claimants were traveling as passengers, though no such report has been filed before the Tribunal.

8. On the other hand, Mr. Dashrath Gupta, learned counsel for the non-applicant No.3/Insurance Company submitted that it is not disputed that the vehicle was insured as a private vehicle to carry only 9 passengers including the driver and the cleaner, however, the same was being used for hire and reward in breach of insurance policy. The claimants and others were traveling in the same as passengers, therefore, the finding of the Tribunal exonerating the insurance company from liability of satisfying the award, is based on proper appreciation of the evidence on record and the same does not call for any interference.

9. I have heard learned counsel for the respective parties and have perused the impugned award as also the documentary and oral evidence available on record.

10. As already pointed out, the vehicle was insured as a private vehicle vide document of Ex.D/1. From perusal of the insurance policy of Ex.D/1 it is clear that the insurance company has undertaken to indemnify the insured as mentioned in Section 2 "Liability to Third Parties" which reads as under:



"1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of accident caused by or arising out of the use of Motor Car against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of :

- (a) death or bodily injury to any person including the occupants carried in the Motor Car provided such occupants are not carried for hire requirements of the Motor Vehicles Act, 1988 the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured."*

11. Now the only question to be decided is - "whether finding of the Tribunal that the claimants were traveling in the said vehicle on the date of accident as passengers after paying fare charges, is justified?". From perusal of the statements of both claimants i.e. Nirmal Bai & Bund Ram, who have been examined during trial, it is evident that they have categorically stated that they knew the owner of the vehicle since before and as the vehicle was going to Pandariya where daughter-in-law of the owner resides, they traveled in the vehicle without paying any charges. Learned Tribunal in paragraph 14 of the award has held that the claimants were traveling in the vehicle after paying fare charges as it is a common practice in this area that all the jeeps are being used as taxi for carrying passengers after getting fare charges from them but they do not issue any ticket to them and in these circumstances, the non-applicant No. 2 while under employment of non-applicant No.1 did not issue any ticket to the passengers. The finding recorded by the Tribunal is not borne out from the evidence available on record, therefore, the award impugned whereby the insurance company/non-applicant No. 3 has been exonerated from satisfying the impugned award on the ground that on the date of accident the vehicle in question was being driven in breach of insurance policy, cannot be sustained.



12. In the result, the appeal stands allowed. The award impugned is modified to the extent that along with appellant/non-applicant No.1 and non-applicant No.2/driver, non-applicant No.3/Insurance Company shall also be liable for payment of compensation to the claimants Nirmala Bai & Bund Ram, jointly and severely.

13. A copy of this judgment be placed in the record of M.A.No. 420/2004.

Sd/-
Dhirendra Mishra
Judge